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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,873	11/20/2003	Daniel J. Falla	60665B	9382

109 7590 09/28/2006

THE DOW CHEMICAL COMPANY
INTELLECTUAL PROPERTY SECTION,
P. O. BOX 1967
MIDLAND, MI 48641-1967

EXAMINER

KRUEER, KEVIN R

ART UNIT	PAPER NUMBER
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1773

DATE MAILED: 09/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/717,873

Applicant(s)

FALLA ET AL.

Examiner

Kevin R. Kruer

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Advisory Action

Applicant's arguments filed September 8, 2006 have been fully considered but are not persuasive.

Applicant argues in light of the specification the preamble limitation "synthetic cork closure for a liquid container" should be understood to structurally limit the claimed subject matter to a "cork or stopper like shape." Said argument was addressed in the final office action. Specifically, the examiner noted the specification fails to expressly describe the limitations applicant argues are inherent to the preamble limitation. Furthermore, the examiner noted that one of applicant's incorporated references, US 5,855,287, teaches the cork may be molded to have any desired shape and size (col 6, lines 36-37; col 3, lines 15+; col 7, lines 4+). While the reference teaches the preferred shape is a closure for a wine bottle, said teachings are not limited to such closures and can be fairly read to teach closures of any shape and size. Thus, the examiner maintains the position that said preamble limitation fails to structurally limit the claimed invention.

With respect to the rejection based upon Sheller in view of Burns, Applicant argues that Burns is limited to cork gaskets that are used to provide an effective seal between confronting faces of adjacent elements in modern machinery. The examiner respectfully disagrees Sheller is limited to such embodiments. Sheller's teachings are to cork gaskets, which is understood to encompass closures for a liquid container (as evidenced by US 6,235,822). The examiner notes that US'822 is merely an evidentiary reference to demonstrate the examiner's position is consistent with the state of the art

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and does not constitute a new grounds of rejection. Thus, Applicant's request to withdrawal finality is denied. Applicant disagrees with the examiner's use of US'822 as a "quasi-definitional" reference because most dictionaries define the term "gasket" in such a way that it has a meaning clear from Sheller. The examiner initially notes that no such evidence is of record. The examiner also questions how a dictionary definition of "gasket" can demonstrate said word has a "meaning clear from Sheller" when Sheller explicitly defines his definition as a "cork gasket." If anything, a dictionary definition will determine the scope of Sheller's invention, not distinguish the teachings of Sheller from a "gasket." Applicant argues US'822 teaches gaskets not as a closure but as a cap liner, ring, and the like. The examiner notes the list in column 14 also includes sealed containers, cap closures, and synthetic cork materials. Thus, the examiner maintains the position that the "gasket" teaching of Sheller is in the same field of endeavor as Burns and applicant's claimed invention.

Applicant argues that Sheller is not logically applicable to the present invention because it is in a different field of endeavor in that it relates to different subject matter, material, environment, and solves a different problem. Said issue was addressed in the final office action and applicant's attention is pointed to the discussion therein for a complete answer to this argument.

With regard to the "light microscope" limitation of claim 1, Applicant argues the examiner asserts without basis that the coating of Sheller meets said limitation. The examiner respectfully disagrees. The examiner's conclusion was based on the fact that

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Sheller teaches a polymer that reads on claim 1 applied by a method that reads on applicant's coating method.

Applicant argues the motivation to combine is not relevant to the gasket teachings of Sheller. The examiner respectfully disagrees for the reasons noted on the bottom of page 7 of the final office action.

In response to the examiner's statement in the final rejection that "the art contains a plethora of examples of contains being applied to the synthetic corks," Applicant asked for citations to support said statement. Applicant's attention is pointed to US patents 6248272, 6179,141, and 4091136. Applicant further asks for a citation that synthetic cork has been specifically designed to be used as an alternative to natural cork. See "Background of the Invention" in Burns (of record).

Applicant's arguments with respect to the dependent claims are not persuasive for reasons of record.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R. Kruer whose telephone number is 571-272-1510. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on 571-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kevin R. Kruer
Patent Examiner-Art Unit 1773